Re Dato Loh Fook Yen, ex parte Malayan United Finance Bhd

HIGH COURT (JOHORE BAHRU) – BANKRUPTCY NO 43-574-87
LC VOHRAH J
7 AUGUST 1988

Bankruptcy – Validity of bankruptcy notice disputed by debtor – Whether notice of dispute was sufficiently given and within required time – Bankruptcy Act 1967, s 3(2)

Statutory Interpretation – Computation of time – Excluded days – Weekly holidays and public holidays – Whether to be reckoned in computation of time exceeding six days – Interpretation Act 1967, s 54(1)

The judgment creditor took out a bankruptcy notice against the judgment debtor requiring payment within seven days after service of the notice excluding the day of service the judgment sum inclusive of interest and costs as particularized in the notice. The bankruptcy notice was served on the judgment debtor on 15 September 1987. On 22 September 1987, the judgment debtor filed in court a notice of motion seeking an order, inter alia, that the bankruptcy notice be struck out on the ground that the bankruptcy notice suffered from an incurable defect, namely, that the interest and further interest calculated were erroneous and excessive. The next day an unsealed copy of the notice of motion and a copy of the supporting affidavit were served on the solicitors for the judgment creditor.

At the hearing of the motion, a preliminary point was raised on behalf of the judgment creditor, namely, that it was not open to the judgment debtor at that stage to challenge the validity of the bankruptcy notice because no notice of dispute by reason of such excess as referred to in proviso (ii) to s 3(2) of the Bankruptcy Act 1967 was given within the stated period of seven days after service of the bankruptcy notice.

Held, dismissing the motion:

(1) It was obvious that by para 4 of the affidavit in support of the notice of motion, the judgment debtor clearly disputed the validity of the bankruptcy notice so that when the solicitors for the judgment creditor were served with a copy of the notice of motion, albeit unsealed, together with the affidavit in support, the judgment creditor was put on notice that the validity of the bankruptcy notice was being disputed on the ground that it was erroneous and excessive. The affidavit in that form constituted sufficient notice to the creditor within the meaning of s 3(2) of the Act.

(2) However, the said affidavit had not complied with proviso (ii) to s 3(2) of the Bankruptcy Act, having been delivered eight days after the service of the bankruptcy notice, ie outside the time allowed for payment. The bankruptcy notice could not be challenged as to the sum specified therein. Accordingly the bankruptcy notice must be allowed to stand.

Case referred to

1 *Re Arunachalam, ex p Indian Overseas Bank Ltd* [1968] 1 MLJ 89 (folld)

Legislation referred to

Bankruptcy Act 1967 s 3(2)
Bankruptcy Rules 1969 r 98
Interpretation Act 1967 s 54
Rules of the High Court 1980 O 14 r 3

Yew Yang Poh for the judgment debtor.
TS Chong for the judgment creditor.
TS Wong (Assistant Official Assignee) for the Official Assignee.

Cur Adv Vult

LC Vohrah J: This application by way of notice of motion has five prayers but at its hearing on 15 May 1988 counsel for the judgment debtor indicated that he would only be proceeding with the first two prayers, namely (i) that the bankruptcy notice be struck off and (ii) that the court declare under r 98 of the Bankruptcy Rules 1969 that no act of bankruptcy has been committed by the judgment debtor.

The facts in so far as they are relevant to these two prayers are as follows. The judgment creditor obtained final judgment against the judgment debtor on 23 September 1986 as a result of an application for summary judgment under O 14 r 3 of the Rules of the High Court 1980. It was adjudged that the judgment debtor and three others jointly and severally pay the judgment creditor the sum of $2,324,914.03 'as at 30 November 1985 together with interest thereon at the rate of 16% pa from 1 December 1985 to the date of judgment and further interest at the rate of 8% pa from the date of judgment to the date of realization and $350 costs'. The bankruptcy notice which was filed on 17 August 1987 required the judgment debtor within seven days after service of the notice excluding the day of the service to pay the sum of $2,786,630.30 set out as follows:

(1)	Judgment amount	$2,324,914.03
(2)	Interest on $2,324,914.03 at 16% pa from 1 December 1985 to 23 September 1986	$ 302,755.47
(3)	Interest on $2,324,914.03 at 8% pa from 24 September 1986 to 31 July 1987	$ 158,610.80
(4)	Costs	$ 350.00
		$2,786,630.30

The interest of $302,755.47 and the further interest of $158,610.80 charged at the rate of 16% pa and 8% pa respectively on the decretal sum were arrived at by calculating interest on a yearly basis and by assuming that one year consists of exactly 365 days and one month of exactly 30 days. The bankruptcy notice was served on the judgment debtor on 15 September 1987. On 22 September 1987, the judgment debtor filed the instant notice of motion and its supporting affidavit in court and on the next day, 23 September 1987, served an unsealed copy of the notice and a copy of the supporting affidavit on the solicitors for the judgment creditor. The ground for the two prayers in this application is that the notice suffers from an incurable defect because the interest and further interest calculated on the judgment sum were erroneous and excessive as a result of the calculation based on the

assumption as above stated which is false and which gives an advantage to the judgment creditor whereas the logical calculation should be a calculation based on the correct number of days for which interest is to run divided by the exact number of days in that year depending upon whether it is made up of 365 days or 366 days.

Before I can go into the merits of this ground I have first to consider the preliminary point that has been raised by counsel for the judgment creditor to the effect that it is not open to the judgment debtor at this stage to challenge the validity of the bankruptcy notice because no notice of dispute by reason of such excess as referred to in proviso (ii) to s 3(2) of the Bankruptcy Act 1967 was given within the stated period of seven days after service of the bankruptcy notice. It is obvious that para 4 of the affidavit in support of the notice of motion clearly disputes the validity of the bankruptcy notice so that when the solicitors for the judgment creditor were served with a copy of the notice of motion, albeit unsealed, together with the affidavit in support, the judgment creditor was put on notice that the validity of the bankruptcy notice was being disputed on the ground that it was erroneous and excessive. I would therefore consider that the said affidavit in that form constituted sufficient notice to the creditor within the meaning of s 3(2) of the Act: *Re Arunachalam, ex p Indian Overseas Bank Ltd.*[1] It has, however, been argued by counsel for the judgment creditor that even if the said affidavit was sufficient notice per se it still could not invalidate the bankruptcy notice because it had been served out of time on 23 September 1987 which was one day beyond the seven days stated in the bankruptcy notice exclusive of the day of service. Counsel for the judgment debtor in reply contended that the seven-day period must exclude the weekend holiday or any public holiday.

Excluding the day on which service of the bankruptcy notice was effected, payment should have been made before midnight of 22 September 1987 which date according to the calendar was a Tuesday and a working day. Section 54 of the Interpretation Act 1967 relating to the computation of time reads:

> 54(1) In computing time for the purposes of any written law:
>
> (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
>
> (b) *if the last day of the period is a weekly holiday or a public holiday (referred to in this subsection as excluded days) the period shall include the next following day which is not an excluded day*;
>
> (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day; and
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> (d) *where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.*
>
> (2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.
>
> (emphasis provided)

Since para (d) of sub-s (1) excludes the weekly holiday or a public holiday in the computation of time in respect only of periods not exceeding six days, it is logical to assume tthat for a period in excess of six days any weekend holiday or public holiday must be included in the reckoning if the last day of that period is not a weekly holiday or a public holiday. I accordingly hold that the notice of dispute by way of the said affidavit has not complied with proviso (ii) to s 3(2) of the Bankruptcy Act, having been delivered eight days after the service of the bankruptcy notice, ie outside the time allowed for payment. The bankruptcy notice therefore cannot be challenged as to the sum specified therein. In the result, the bankruptcy notice must be allowed to stand and the second declaratory prayer by virtue of s 3(1)(i) would appear to be misconceived. The application in its present attenuated form has therefore to be dismissed with costs.

Application dismissed.

Solicitors: *CC Kok & Yeo*; *TS Chong & Co.*

Reported by *PS Ranjan*